IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WA.No. 2502 of 2007

(AGAINST THE JUDGEMENT IN WPC.21912/2007 Dated 18/09/2007)

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APPELLANT: 1ST RESPONDENT:

KERALA FINANCIAL CORPORATION,
PERUMBAVOOR BRANCH,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.P.PARAMESWARAN NAIR, STANDING COUNSEL, KFC

RESPONDENTS: PETITIONER & RESPONDENTS 2 & 3:

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1. M.D. PATHROSE,
MANICHEERRY HOUSE,
AIMURY,
KOOVAPPADY P.O.,
PERUMBAVOOR.

2. DEPUTY TAHSILDAR (RR),
KERALA FINANCIAL CORPORATION,
ERNAKULAM-682 017.

3. THE DISTRICT COLLECTOR,
ERNAKULAM.

R1 BY ADV.SRI.VIJU ABRAHAM.
R2 & R3 BY GOVERNMENT PLEADER SRI.M.P.SREEKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2502 of 2007

Dated this the 23rd day of October, 2007.

J U D G M E N T

Sankaran, J.

The appellant, Kerala Financial Corporation who was the first respondent in W.P.(C) No.21912 of 2007 challenges that part of the judgment of the learned Single Judge wherein it is observed that, under the proviso to Section 71 of the Kerala Revenue Recovery Act, the appellant is liable to pay collection charges.

(2). Mr.M.D.Pathrose availed a loan from the Kerala Financial Corporation. He defaulted in re-paying the amount. Revenue recovery proceedings were initiated against him. At that time, he approached the Kerala Financial Corporation for one time settlement. One time settlement facility was allowed and the entire amount payable to the Kerala Financial Corporation was paid by the defaulter. The Kerala Financial Corporation duly intimated to the revenue recovery authorities about the proposal to have one time settlement and also about the payment of the full amount payable to the Kerala Financial Corporation. Kerala Financial Corporation requested the revenue recovery authorities to withdraw all the revenue recovery proceedings, as per letter dated 28-3-2007.

(3). The writ petition was filed by the defaulter, Mr.M.D.Pathrose complaining that, though the full amount was paid by him to the Kerala

Financial corporation, the title deeds in respect of his property were not released by the Kerala Financial Corporation. The Kerala Financial Corporation agreed that the full amount was paid by the defaulter. It was submitted by the Kerala Financial Corporation that the documents could be released only after clearance certificate is received from the revenue recovery authorities.

(4). At the time of arguments in the writ petition, learned Government Pleader submitted that the defaulter is liable to pay 5 percent of the amount due as collection charges under the Revenue Recovery Rules. His contention was negatived by the learned Single Judge, relying on the decision in ***Bhaskaran V. Sub Registrar (2005 (3) KLT 150)***. However, the learned Single Judge held that, under the proviso to Section 71 of the Revenue Recovery Act, the Kerala Financial Corporation has to pay the collection charges. This part of the judgment against the Kerala Financial Corporation is under challenge in this writ appeal.

(5). Sri.Parameswaran Nair, learned counsel for the appellant submits that, when the full amount payable to the Kerala Financial Corporation is paid and the revenue recovery proceedings were withdrawn, there was no justification for directing the Kerala Financial Corporation to pay the collection charges to the revenue recovery authorities. He also relied on the decision in *Bhaskaran V. Sub Registrar (2005 (3) KLT 150)* in support of his contention. Proviso to Section 71 of the Revenue Recovery Act only provides that the

collection charges shall be paid by the requisitioning authority. It does not in any way indicate that when the full amount payable to the requisitioning authority is paid by the defaulter and the revenue recovery proceedings are withdrawn, still the requisitioning authority is liable to pay collection charges to the revenue recovery authorities.

(6). In view of the above, the observation/finding in the judgment impugned that, by virtue of the proviso to Section 71 of the Revenue Recovery Act, the Kerala Financial Corporation is liable to pay collection charges is set aside. The direction issued by the learned Single Judge to the appellant to release the title deeds to the writ petitioner is confirmed. The finding that the writ petitioner is not liable to pay the collection charges is also confirmed.

The Writ Appeal is disposed of as above.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS